

## **EXHIBIT 13**

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

IN RE: DEVON ARCHER,  
Petitioner,

No. 17-

**PETITION FOR A WRIT OF MANDAMUS**

Devon Archer respectfully submits this petition for a writ of mandamus ordering the United States District Court for the Southern District of New York to stay its order of January 31, 2017, which denied Mr. Archer the opportunity to move to quash a facially deficient search warrant for electronic records under the Stored Communications Act, which (among other things) called for the production of potentially thousands of privileged communications. The District Court also denied Mr. Archer's motion to stay execution of the warrant pending appeal.

On February 1, 2017, Mr. Archer filed a direct appeal of the District Court's order pursuant to 28 U.S.C. §§ 1291 and 1292(a)(1), which has been docketed as *United States of America v. Galanis (Archer)*, No. 17-346. This Court has jurisdiction over the direct appeal

under both sections 1291 and 1292(a)(1), and Mr. Archer therefore seeks the issuance of a writ of mandamus only to the extent this Court concludes that it lacks appellate jurisdiction under either of those provisions. In the event that the Court determines that it lacks jurisdiction under sections 1291 or 1292(a)(1), the writ should issue because Mr. Archer will have “no other adequate means to attain the relief” he seeks, and because Mr. Archer has a “clear and indisputable right to the writ.” *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 542 U.S. 367, 380-81 (2004). As is set forth in more detail in Mr. Archer’s motion for a stay pending appeal, which is being filed simultaneously in the direct appeal, the government’s execution of the warrants will irreparably abrogate the attorney-client privilege of both Mr. Archer and other individuals and entities, making suppression an incomplete remedy. The District Court clearly erred by not even entertaining Mr. Archer’s motion to quash the warrants.

Because the facts and legal issues in the direct appeal and this petition are nearly identical, and because the request for a writ of mandamus is conditioned upon whether the Court finds that it has jurisdiction over the direct appeal, Mr. Archer will present arguments

in support of this petition in his motion, so as to avoid duplication and to reduce the volume of filings for the Court. *See, e.g., SEC v. Rajaratnam*, 622 F.3d 159, 167-69 (2d Cir. 2010) (granting mandamus request presented in single appellate brief that combined arguments on direct appeal and arguments in support of petition for a writ of mandamus). Mr. Archer will accordingly move the Court to consolidate this petition with the docketed direct appeal once both cases are docketed.

Dated: February 6, 2017  
New York, New York

Respectfully submitted,

BOIES, SCHILLER & FLEXNER LLP  
*Attorneys for petitioner Devon Archer*

/s/ Matthew L. Schwartz  
Matthew L. Schwartz  
575 Lexington Avenue  
New York, New York 10022  
Tel.: (212) 446-2300  
E-mail: mlschwartz@bsflp.com

**CERTIFICATE OF SERVICE**

On February 6, 2017, I caused the following individuals to be served, by electronic mail and first class U.S. mail at the addresses listed below, with appellant Devon Archer's motion for a stay pending appeal; the Declaration of Matthew L. Schwartz with supporting exhibits, and Mr. Archer's petition for a writ of mandamus:

Rebecca Mermelstein  
Brian Blais  
Aimee Hector  
United States Attorney's Office  
for the Southern District of New York  
One Saint Andrew's Plaza  
New York, New York 10007  
E-mail: rebecca.mermelstein@usdoj.gov  
brian.blais@usdoj.gov  
aimee.hector@usdoj.gov

Hon. Ronnie Abrams  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, New York 10007  
E-mail: Abrams\_NYSDChambers@nysd.uscourts.gov

/s/ Matthew L. Schwartz  
Matthew L. Schwartz